

No. 84-727

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1984

MICHAEL J. KOONCE,

Petitioner,

vs.

STATE OF INDIANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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INDIANA**

THE QUESTION PRESENTED FOR REVIEW

Were investigators employed by the Petitioner's insurance carrier acting as agents of law enforcement authorities so as to bring their search of the Petitioner's fire-damaged home within the warrant requirements of the Fourth Amendment?

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Respondent, the State of Indiana, respectfully prays this Court to deny the issuance of a writ of certiorari directed to the Supreme Court of Indiana.

OPINION BELOW

The Court of Appeals of Indiana entered a memorandum decision in this case on March 28, 1984. This decision may be found in Petitioner's Appendix at A-3. The unpublished order of the Court of Appeals of Indiana denying rehearing was entered on May 23, 1984 and appears in Petitioner's Appendix at A-2. The unpublished

order of the Supreme Court of Indiana denying transfer was entered on September 5, 1984 and appears in Petitioner's Appendix at A-1.

STATEMENT OF THE CASE

(Page references herein are to the Record of the Proceedings, "R.", and Supplemental Record of the Proceedings, "Supp.R." filed with the Indiana Court of Appeals.)

The action was instituted by the filing of a one (1) count indictment on March 2, 1982 alleging that the Petitioner committed the offense of arson on October 7, 1981 by setting fire to his home located in Evansville, Indiana (R.6-7). The Petitioner entered a plea of not guilty, and the matter was set for trial by jury (R.10).

Prior to trial, the Petitioner filed a motion to suppress seeking to exclude all evidence seized by the State of Indiana through the investigations of A.R.C. Consultants and Investigators, Inc. (R.29-31). The basis for the suppression of that evidence was stated as follows:

"1. The investigations were conducted without the benefit of a valid search warrant.

2. A.R.C. Consultants, through Herbert T. Miller, and State Farm Fire and Casualty Co., through Richard Goldsmith, were acting as agents for the State of Indiana, specifically the Fire Department.

3. Any and all evidence obtained by the State of Indiana through its agents without a valid search warrant, where such warrant would be required had the State conducted its own investigation, is inadmissible as the illegal fruits of an unlawful and unreasonable search and seizure."

(Petitioner's motion to suppress, R.29-31).

A hearing was held on the Petitioner's motion to sup-

press and the motion was ultimately denied (R.29, 46-47, Supp. R. 1).

Trial to a jury commenced on September 13, 1983. At trial, the Petitioner interposed an objection to the testimony of Richard Goldsmith, a claims representative for State Farm Insurance Company, as to the results of his inspection of the Petitioner's home, the basis of that objection being those reasons set forth in his motion to suppress. The Petitioner further requested that his objection be shown to be a continuing objection.

The facts show that Petitioner's home burned on October 7, 1981 and on October 8, 1981 he made a claim to his insurance carrier, State Farm (Supp.R. 6-7, 31-33; R.92).

Richard Goldsmith, the State Farm representative, met with Petitioner on October 8, 1981 regarding the claim and surveyed the fire-damaged home (Supp.R. 32). Roger Griffin, the fire investigator for the Evansville Fire Department, went by the scene of the fire on October 8, 1981 on his rounds in the course and scope of his official duties (Supp.R. 6-7, 10-11). He ran into Goldsmith there at the scene and was advised by Goldsmith that State Farm would be calling in fire investigation specialists from A.R.C. Consultants and that he personally felt the fire was of suspicious origin (Supp.R. 10, 31-33). Fire Department investigator Griffin decided to stay out of the way until State Farm and its representatives completed their investigation (Supp.R. 10-13). Neither Griffin nor anyone else at the Fire Department instructed, directed or controlled in any way whatsoever State Farm's and A.R.C.'s investigation (Supp.R. 20-26). There was no agreement between the Fire Department and State Farm, or any other insurance company for that matter, for the said insurance company and its consultants to investigate origins of fires for the Fire Department (Supp.R. 20-21). The Fire Department did not pay for A.R.C.'s results of the investigation (Supp.R. 20-21, 40). State Farm made a

totally independent decision to hire A.R.C. Consultants. Such is a normal course of action the insurance company takes when a claim for fire insurance benefits is made (Supp.R. 25-26, 33-35, R.123). State Farm, by reasons of its contract with Petitioner, had authority to conduct any on-premises investigation it felt necessary and Petitioner understood such an investigation would take place (Supp.R. 40). State Farm, upon completion of its investigation, was required by state law to turn over the information on the investigation to the Fire Department officials (Supp.R. 35-38). Herbert Miller of A.R.C. Consultants determined the fire was purposely set with the use of gasoline (R.212-215).

REASONS WHY THE WRIT SHOULD BE DENIED

The Petitioner contends the Indiana state court has decided a federal question in a way in conflict with applicable decisions of this Court. This is not true. This Court has well-established the rule that the Fourth Amendment protection against unreasonable search and seizure applies only as to "searches and seizures which are made under governmental authority, real or assumed, or under color of such authority." *Burdeau v. McDowell*, 256 U.S. 465, 467 (1921); *followed, Walter v. United States*, 447 U.S. 649, 656 (1980).

"It has, of course, been settled since *Burdeau v. McDowell* that a wrongful search and seizure conducted by a private party does not violate the Fourth Amendment and that such private wrongdoing does not deprive the government of the right to use evidence that it has acquired lawfully."

Id. at 447 U.S. 649, 656.

Of course in the instant cause the search and seizure by State Farm or its representatives was not wrongful and was made with the consent and full understanding of the

Petitioner. But the legal rule clearly applies that State Farm and A.R.C. Consultants were private parties not subject to the Fourth Amendment warrant requirements and the evidence uncovered by said private parties does not deprive the government of its use.

Petitioner contends, however, that State Farm and its hired investigative consultants were agents of the law enforcement officials acting in joint enterprise with the fire department and therefore would be subject to the warrant requirements of the Fourth Amendment. In determining whether a private party is an agent of the governmental authorities we must examine the facts to see whether the governmental officials dominated, directed or coerced the private parties' actions. *Coolidge v. New Hampshire*, 403 U.S. 443, 489 (1971). The facts in this case clearly show that State Farm and its hired fire investigators at A.R.C. Consultants acted independently with no direction, instruction or remuneration from the fire department officials. They carried out their investigation as they would in any case involving a fire insurance claim and the fire department officials merely stayed out of their way (See the facts as set out in the *Statement of the Case, supra*).

CONCLUSION

The decision below is not in conflict with the applicable decisions of this Court. For this reason, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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